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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1469 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BIPINCHANDRA UMASHANKER

Versus

DY. CHIEF (STAFF)

Appearance:

MR MURLI DEVNANI for MR YOGESH S LAKHANI for Petitioner

MRS SANGEETA N PAHWA for Respondent No. 1

NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision:01/03/2001

JUDGEMENT

The grievance of the petitioner in this petition is that he has been illegally debarred from participating in the

promotion process for a period of two years and the action of the respondent in issuing letter dated 18.11.1992 - Annexure "F" is violative of Promotion Policy framed by the respondent Bank and is also violative of Articles 14 and 16 of the Constitution of India. The brief facts giving rise to this petition are as under.

2. The petitioner is a Branch Manager working in the MMG/S2 Branch of the respondent Bank at Relief Road Branch in permanent officiating capacity. He was initially appointed as Clerk, but subsequently he worked as Accountant, Assistant Manager and Manager in two branches of the respondent Bank. There was no stigma against the petitioner, nor any enquiry or disciplinary proceedings were initiated against him. The petitioner became eligible for promotion to MMG/S2 and he was called for interview on 18.2.1991. He was declared successful in the interview and was offered promotion in MMG/S2 by the respondent Bank, through letter dated 6.5.1991 Annexure "B". He was advised to report at Maugpur Branch not later than 5.6.1991, failing which offer for promotion shall stand revoked ipso-facto. Immediately on receiving the aforesaid offer, the petitioner made a representation through proper channel on 23.5.1991, stating that since he is General Secretary of Officers' Association, he is to be kept in Gujarat in any of the branches of Scale 2 category as per the prevailing Policy of the Bank, vide Annexure "C". This representation was not considered by the respondent Bank. The petitioner was not promoted in MMG/S2 as per letter dated 6.5.1991.

Again on 15.10.1992, the respondent Bank circulated Promotion Policy for promotion from MMG/S1 to MMG/S2, vide Annexure "D". The respondent Bank invited applications from JMG/S1 officers on the prescribed proforma for considering their cases for promotion to MMG/S2. The petitioner applied through proper channel to the respondent Bank vide Annexure "E". However, the petitioner received a letter dated 18.11.1992 from the respondent No.1 that he was debarred from participating in promotion process for a period of two years, as he was not eligible to participate in the current promotion process. The reason assigned in the said letter was that the petitioner was selected for promotion to MMG/S2 in the year 1991 and he had refused to accept the same, vide Annexure "F". It is this decision of the respondent Bank which is under challenge in this writ petition, on the ground that it is illegal, unreasonable, arbitrary and in violation of promotion policy for officers framed by the respondent Bank as per Regulation 17 of New Bank of India

Officers' Service Regulations, 1982.

3. The petition has been contested on the ground that since the petitioner was not eligible to participate in the second selection process for promotion, he was rightly debarred from participating in the same.

4. Shri Murali Devnani, learned Counsel representing the petitioner and Ms. Sangeeta Pahwa, learned Counsel for the respondent were heard.

The short point for consideration in this petition is whether the petitioner was illegally debarred from appearing in the second selection process for promotion to MMG/S2 and Rule 17 of The New Bank of India Officers' Service Regulations, 1982 were violated. The aforesaid Regulation 17 reads as under:-

> "If an officer appears for promotion process and gets selected and refuses to accept promotion without adducing sufficiently convincing reasons, he shall not be eligible for promotion for a further period of two years"

A plain reading of the aforesaid Regulation 17 makes it clear that if an officer appears for promotion process and is selected, but he refuses to accept promotion without any sufficient and convincing reason, he shall not be eligible for promotion for a further period of two years. Looking to the facts of the case, it is undisputed that the petitioner in the first promotion process was selected for promotion and through letter dated 6.5.1991 - Annexure "B", he was informed that the promotion shall be effective from 6.5.1991. He was further directed to accept this offer of promotion and sign duplicate copy of this letter and return it to the Assistant General Manager (P), Head Office, Marina Hotel Building, G-59, Connaught Circus, New Delhi, in token of his acceptance and hand over the charge of the branch/office to the next senior officer of the branch/office. It was further intimated that after handing over charge, the petitioner should report at the new place of posting within one month from the date of issuance of this letter, but not later than 5.6.1991, failing which the offer of promotion thereby given shall stand revoked ipso-facto without any communication in this behalf irrespective of the petitioner's acceptance.

5. Ms. Sangeeta Pahwa, learned Counsel for the respondent argued that neither the petitioner signed duplicate of this offer, nor returned the same to the

officer mentioned in the offer, nor handed over charge of the branch to the next senior officer, nor proceeded to join at the new place of posting on or before 5.6.1991 and hence, the offer of promotion stood automatically revoked on 5.6.1991. She has relied upon Annexure "A" which is Promotion Policy of the Bank and placed reliance on Clause 6.2 (ii), which provides that the officers who had refused posting in rural areas earlier as a result of which they could not attain the requisite experience, will not be considered for promotion for a period of two years from the date they otherwise became eligible for promotion or refused rural posting, whichever is later. On these documents, she contended that in the first place the petitioner refused to accept the offer of promotion and secondly, he did not attain requisite experience because he did not agree to posting in rural areas, rather refused to accept such posting.

6. The contention of Shri Murli Devnani has been that at no point of time the offer for promotion was refused, rather representation was made upon receipt of offer for promotion, vide Annexure "C" dated 23.5.1991, but this representation was neither considered nor allowed, nor rejected and hence the petitioner cannot be said to have refused the offer of promotion. In Annexure "C", the first difficulty in joining at the place of posting disclosed by the petitioner was that since he was General Secretary of N.B.I.O.U, Gujarat State and as per the understanding arrived at between A.I.N.R.I.O.A and the Bank Management, he should not be transferred out of Ahmedabad. This was the main ground on which the petitioner did not wish to be transferred out of Ahmedabad and insisted that he may be permitted to function in his Scale-II at Ahmedabad till such time a Rural Branch is opened in Ahmedabad region. In view of Annexure "E", namely - offer of promotion, since the petitioner did not comply with the directions contained therein, it will be deemed that he refused to accept the offer and the same stood automatically revoked on 5.6.1991. If this was so, then in view of Regulation 17 quoted above, the petitioner became ineligible for promotion for a period of two years. The question of debarring the petitioner from promotion subsequently does not arise, inasmuch as he refused the first offer of promotion and as such for a period of two years he did not become eligible for participating in the subsequent promotion process.

Mr. Devnani however, submitted that even the subsequent period of two years has also expired and as such the petitioner should have been permitted to

participate in the selection process for promotion. To this, Ms. Sangeeta Pahwa pointed out from the counter affidavit that the cut-off date for subsequent promotion was 30th September, 1992, vide paragraph 8 at page 11 of the counter affidavit, wherein it is deposed that carrying out of the promotion process with cut-off date as 30th September, 1992 is also a matter of record. The earlier promotion was given to the petitioner on 6.5.1991, vide page 20 of the compilation. In any case computed from 6.5.1991 when the first promotion was offered to the petitioner, two years period expired on 5.6.1993. Since the cut-off date of subsequent promotion was 30th September, 1992, it was well within a period of two years from 6.5.1991 and during this period the petitioner could not be said to have become eligible to participate in the promotion process. Consequently, I do not find any illegality in the letter dated 18th November, 1992 - Annexure "F", which mentions that the petitioner is not eligible to participate in the current promotion process from JMC/S-I to MMG/S-II. As such this letter Annexure "F" cannot be quashed and set aside.

The learned Counsel Mr. Devnani further argued that there has been discrimination, inasmuch as Ms. V. Swaminathan whose promotion was with-held upto 22.5.1994 was permitted to participate in the promotion process vide Annexure "H", page 31 at Serial No. 48. I however, do not find any merit in this attack also, because in the counter affidavit the case of Ms. V. Swaminathan has been clearly disclosed. Referring to paragraph 15 of the counter affidavit, it is mentioned that punishment was awarded to Ms. V. Swaminathan, which was operative for a period of two years i.e. upto 22.5.1994, and it was not a case of refusal to accept the promotion, and her case is covered by Clause 8 of the Promotion Policy of the Bank, which reads as under:-

> "Clause 8: Officers in respect of whom disciplinary action has been taken in the past would not normally be permitted to participate in the promotion process for a period of three years from the date of infliction of any punishment, except censure. In all such cases (except censure), a Committee of Executives at Central Office, appointed by the Chairman & Managing Director would, however, review and take a decision in regard to the eligibility for promotion having regard to the gravity of the misconduct and subsequent service record."

It is further deposed that the case of Ms. V.

Swaminathan alongwith other cases was considered by the Committee before the promotion process was undertaken and on 13.11.1992, the Committee permitted certain officers including Ms. V. Swaminathan to participate in the promotion process. It is thus, clear that the case of Ms. V. Swaminathan is altogether distinguishable because her case is governed by Clause 8 of the Promotion Policy, whereas the case of the petitioner is governed by Clause 17 of the Promotion Policy. Ms. V. Swaminathan never refused to accept the offer of promotion, rather she could not be considered for promotion because of enquiry continuing against her and when she was cleared for promotion, she was permitted to participate in the promotion process.

In view of the aforesaid discussion, I do not find any illegality in the impugned order - Annexure "F" dated 18.11.1992 and consequently, it cannot be quashed. As a consequence thereof, no writ of mandamus can be issued directing the respondents to allow the petitioner to participate in the promotion process by permitting him to appear in the interview. The result therefore is that there is no merit in this petition, which must fail. The petition is accordingly dismissed with no order as to costs.

Dt.1.3.2001

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